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EVELYN LANGFORD

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EVELYN LANGFORD,

Defendant.

No. 3:15-cr-00035-JST

**DEFENDANT LANGFORD'S
SENTENCING MEMORANDUM**

Date: June 26, 2015

Time: 9:30 a.m.

Judge: Hon. Jon S. Tigar

Court: Courtroom 9, 19th Floor

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1 **I. INTRODUCTION**

2 On March 20, 2015, defendant Evelyn Langford entered a plea of guilty, pursuant to
 3 Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, to one count of wire fraud, in
 4 violation of 18 U.S.C. §1343, and one count of bribery, 18 U.S.C. § 666(a)(1)(B). Dkt. 11.
 5 Ms. Langford has admitted to requesting and receiving \$260,000 from a contractor with the
 6 American Samoa government, whose work Ms. Langford partially oversaw in her work for
 7 the American Samoa government. *Id.* at ¶ 2. Ms. Langford subsequently made
 8 arrangements to have the contractor meet with the Governor of American Samoa for the
 9 purpose of pitching business proposals to him. *Id.*

10 In the plea agreement, the parties agreed that a reasonable and appropriate
 11 disposition of this case is as follows: a sentence of not more than 57 months; 3 years of
 12 supervised release; no fine; and restitution as ordered by the Court. Dkt. 11, ¶ 8. The
 13 parties further agreed that under the Sentencing Guidelines, the base offense level (under
 14 USSG § 2C1.1(a)) is 14 points, with an additional 12 points for the value of things obtained
 15 of more than \$200,000 but less than \$400,000. Dkt. 11, ¶ 7. Because of Ms. Langford's
 16 acceptance of responsibility for the offense, the parties agreed that a 3-level reduction was
 17 appropriate. *Id.* Thus, the adjusted offense level under the Guidelines is 23. *Id.*; *see also*
 18 PSR ¶¶ 3, 14-25. Based upon this adjusted offense level and a criminal history category of
 19 I, the advisory Guideline range is 46 to 57 months' imprisonment.

20 Probation agrees with the parties' Guidelines calculation. *See* PSR ¶ 3. Probation
 21 also recommended, based on Ms. Langford's personal history and characteristics, that a
 22 variance be granted and that she be sentenced to a term of 36 months' imprisonment. PSR,
 23 Sentencing Recommendation at 2. Ms. Langford has no objections to the PSR.

24 For the reasons set forth more fully below, however, Ms. Langford respectfully submits,
 25 that a more substantial variance from the Guidelines is appropriate in this case. In particular, a
 26 variance is needed under Section 3553(a)(6) to avoid substantial disparities with the vast
 27 majority of public corruption sentences, which are significantly lower than the applicable
 28 Guidelines. Although Ms. Langford fully accepts responsibility for her offense and deeply

1 regrets what she did, public officials convicted of substantially more egregious conduct often
2 receive more lenient sentences than Ms. Langford's agreed-upon Guidelines range. Former
3 Virginia Governor Bob McDonnell, the only other defendant of whom the defense is aware
4 convicted solely for providing access to other public officials (rather than for taking certain
5 official acts (e.g., supporting certain legislation)) in exchange for cash or gifts, received a
6 sentence that was less than 20% of the low-end of the applicable Guidelines range – and that
7 was after a lengthy and hard-fought trial. *See infra* at Section II.C.2. Sentences for bribery
8 convictions well below the applicable Guidelines ranges are the norm in this Circuit and
9 nationwide. More than 60% of sentences in public corruption cases nationwide in fiscal year
10 2014 were below the applicable Guidelines range, and of those sentences, the median sentence
11 was 66.7% lower than the low end of the applicable Guidelines range. *See infra* at Section
12 II.C.3. A sentence 66.7% lower than the low end of Ms. Langford's Guidelines range (46
13 months) is **15 months**, not counting any other factors militating in favor of a variance.

14 But there are a number of other factors that support a variance, especially the nature and
15 circumstances of the offense and the history and characteristics of the defendant. *See* 18 U.S.C.
16 § 3553(a)(1). As described more fully below, Ms. Langford has been a dedicated and selfless
17 soldier, daughter, mother and public servant, but she has suffered some extraordinary traumas
18 and has been subjected to some nearly impossible demands that resulted in her having post-
19 traumatic stress disorder, which impaired her ability to understand the wrongfulness of her
20 conduct. *See infra* at Section II.B.

21 Taking the above, as well as a number of other facts, circumstances and Section 3553(a)
22 factors discussed below, into account, Ms. Langford respectfully requests that the Court
23 sentence her to 12 months. She further submits that allowing her to serve some of that time in
24 home detention or a halfway house would enable her to begin to make restitution sooner and
25 also allow her to care for and support her family, especially her 12-year-old son, Joshua.

1 **II. ARGUMENT.**

2 **A. The Court Has Broad Discretion In Sentencing.**

3 “It has been uniform and constant in the federal judicial tradition for the sentencing
4 judge to consider every convicted person as an individual and every case as a unique study in
5 the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment
6 to ensue.” *Koon v. United States*, 518 U.S. 81, 113 (1996). “Underlying this tradition is the
7 principle that the punishment should fit the offender and not merely the crime.” *Pepper v.*
8 *United States*, 562 U.S. 476, at 487-88 (2011) (internal quotations and citation omitted).

9 This Court has broad discretion to sentence Ms. Langford. In the wake of the sea
10 change occasioned by *United States v. Booker*, 543 U.S. 220 (2005), this Court again stands as
11 the arbiter of a just and proper sentence, empowered and required to “make an individualized
12 assessment” of a just sentence pursuant to the factors presented in 18 U.S.C. § 3553(a). *Gall v.*
13 *United States*, 552 U.S. 38, 50 (2007).

14 In the post-*Booker* era, the Sentencing Guidelines “are not mandatory” and “only one of
15 the factors to be considered when imposing sentence.” *Id.* at 59. For this reason, the Supreme
16 Court has emphasized that the Guidelines’ advisory sentencing range is “the starting point and
17 initial benchmark” from which sentencing courts should begin to make their sentencing
18 determinations, but they “are not the only consideration.” *Id.* at 49. Following the Supreme
19 Court decision in *Booker*, a district court must consider the other (co-equal) sentencing factors
20 listed in 18 U.S.C. § 3553(a), and not just the advisory Guidelines, in sentencing an individual.
21 *Booker*, 543 U.S. at 259-60. Indeed, the Court may not even “presume that the Guidelines range is
22 reasonable,” but “must make an individualized assessment based on the facts presented.” *Gall*, 552
23 U.S. at 50. The court has wide latitude to impose a sentence below the Guidelines range, “perhaps
24 because (as the Guidelines themselves foresee) the case at hand falls outside the ‘heartland’ to
25 which the Commission intends individual Guidelines to apply, perhaps because the Guidelines
26 sentence itself fails properly to reflect § 3553(a) considerations, or perhaps because the case
27 warrants a different sentence regardless.” *Rita v. United States*, 551 U.S. 338, 351 (2007) (internal
28 citations omitted).

1 Among the familiar factors that a court must consider are: (a) the nature and
 2 circumstances of the offense and the history and characteristics of the defendant; (b) the need
 3 for the sentence to reflect the seriousness of the offense, to promote respect for the law, to
 4 provide just punishment for the offense, to afford adequate deterrence, to protect the public
 5 from further crimes of the defendant, and to provide the defendant with needed educational or
 6 vocational training, medical care, or other correctional treatment; (c) the kinds of sentences
 7 available; (d) the need to avoid unwarranted sentencing disparities; and (e) the need to provide
 8 restitution to victims of the offense. *See* 18 U.S.C. § 3553(a).

9 **B. Ms. Langford’s History, Personal Characteristics and the**
 10 **Circumstances of the Offense Support a Sentence Below the Guidelines Range.**

11 Section 3553(a)(1) is a “broad command to consider the nature and circumstances of
 12 the offense and the history and characteristics of the defendant.” *Gall*, 552 U.S. at 50 n.6
 13 (internal quotations and citations omitted). Given the facts described in this section, this
 14 factor weighs heavily in favor of a downward variance from the Guidelines.

15 **1. The Offense Conduct and Ms. Langford’s Early Acceptance of**
Responsibility

16 Ms. Langford was the Director of Human Resources of the American Samoan
 17 government and the American Samoa Governor’s Authorized Representative for Disaster
 18 Recovery, and she had partial responsibility for administering a program paid for by a
 19 National Emergency Grant (“NEG”) awarded by the United States Department of Labor to
 20 American Samoa for longer term workforce development following the 2009 tsunami. *Plea*
 21 *Agt.*, Dkt. 11 ¶ 2. The Native Hawaiian Holding Company, Inc. (“NHHC”), run in part by
 22 Quin Rudin, had a contract with American Samoa in which it received some of these NEG
 23 funds. *Id.* Ms. Langford accepted \$260,000 from Quin Rudin. *Id.* She subsequently made
 24 arrangements to have NHHC representatives, including Mr. Rudin, meet with the Governor
 25 of American Samoa to pitch proposals regarding transportation and medical development
 26 projects to the Governor. *Id.* Ms. Langford believed that these proposed projects would
 27 benefit American Samoa. *See* Acceptance of Responsibility Statement.

Ms. Langford understands that it was wrong to engage in the offense conduct and deeply regrets committing the offense. PSR ¶¶ 13 (citing Acceptance of Responsibility Statement), 23. That said, Ms. Langford did not accept the money to fund a lavish lifestyle. Rather, she used the funds she received to repay her debt to the military, as described more fully below. PSR ¶ 28.

As stated by a number of the many people who have submitted character letters on Ms. Langford's behalf, the conduct leading up to this offense and the offense itself were aberrant. *See* Ex. A: Fesoliai Silia Time Ltr. (Ms. Langford exhibited "superior work ethic and strong character" in her work with the NEG program, working through late hours of the night and weekends); Patrick Reid Ltr. (when working with Ms. Langford in the American Samoa Department of Human Resources, "Mrs. Langford never failed to conduct herself with the utmost professionalism and consistently maintained a can-do attitude that was contagious and that never failed to keep our enthusiasm and momentum alive despite such daunting tasks, challenges, and obstacles."). This is not to diminish Ms. Langford's culpability, but rather to place it in the broader context of her life and work.

Importantly, Ms. Langford accepted responsibility for her actions very early on. She cooperated with all requests by the government for interviews, providing truthful information during three government interviews prior to being charged and without seeking any form of immunity. She pleaded guilty pursuant to information, not putting the government to the task of indicting her. She did so before receiving a single page of discovery. She owned up to what she had done and did not attempt to fight the charges against her. Her acceptance of responsibility has been extraordinary.

2. Personal History and Family Life

As Mr. Langford's husband, David Langford, puts it, "[b]e it her own family, my family, her military family or friends or community, she has a gift for drawing in people to her circle of family." David Langford Ltr. The 25 letters submitted in her support with the sentencing memorandum are a testament to the positive impact that Ms. Langford has had upon those in her "circle of family."

(a) **Parents and Siblings**

Ms. Langford was born into a military family, with her father serving in the United States Air Force, and as a result she moved around as a child. PSR, at ¶ 36. While Ms. Langford thought that her family life during her childhood was normal at the time, as she grew up, she began to realize how constricted her family life was. Psychological Evaluation of Scott Lines, Ph.D. (“Lines Report”) (submitted with PSR), at 3. Her family was ruled by her father, who was an “authoritarian, intimidating presence.” Lines Report, at 2. As discussed in fuller detail in the evaluation of Dr. Scott Lines and in the PSR, Ms. Langford’s family dynamics were highly unusual and unsettling, including a well-publicized incident involving her family while her father was an elected official in American Samoa. See, e.g., PSR ¶ 37; Lines Report, at 3. Dr. Lines opines that over time, Ms. Langford’s judgment became impaired partially because of the “psychological pressure of her relationship with her feared powerful father, whom she felt she needed to obey.” Lines Report, at 8.

Ms. Langford’s mother passed away in 2000. PSR at ¶ 35. As the eldest child, Ms. Langford took up the reins in caring for the family—her five siblings and particularly her father, who is now 79 years old. *See id.* Ms. Langford’s siblings have written letters describing the crucial role she has played in their lives. *See* Letters of Carolina Siofele (“[Ms. Langford] remains as the one my father solely depends on today”); Kalepo Vaitautolu (“I am where I am today because of her leadership, mentorship, and guidance.”); Nathan Vaitautolu (after their mother passed away and Mr. Vaitautolu graduated from high school, he moved in with Ms. Langford and she “didn’t treat me any different from her children”); Natalie Wilson (“Since the death of my mother, my sisters took on the role of a mother with me and are always there for me.”).

Ms. Langford’s support for her father has been the most significant and, in crucial ways, life-changing. In 2008, Ms. Langford’s father suffered a stroke and refused to move from American Samoa to live with her in Texas, where Ms. Langford would be able to care for him and he would be able to access better medical care. *Id.* ¶ 48. Ms. Langford went off active military duty to move from Texas to American Samoa to care for her father. *Id.* At that point,

1 she had been in the military for about 26 years, with approximately 17 years of active duty
2 service as a commissioned officer. She had just three years of active duty service remaining
3 before she would qualify for pensioned retirement from the military. Once she left, she could
4 not voluntarily return to active duty; she would have to be called back, such as might occur in a
5 time of war. In moving to American Samoa, she thereby sacrificed a pension of roughly 80% of
6 her base pay (which was approximately \$60,000 per year) for the rest of her life. *See* Kalepo
7 Vaitautolu Ltr. (calling the move a “tremendous sacrifice”). Once she moved to American
8 Samoa, her father made substantial demands of time and money on her. *See* Lines Report, at 5
9 (Ms. Langford “assumed responsibility for all of her father’s expenses, which included his
10 mortgage, medical bills and financial obligations to church and village. She estimated that his
11 financial obligations totaled over \$1500 per month.”).

12 **(b) Spouse and Children**

13 Ms. Langford has six children and is, by all accounts, an “excellent mother.” *See* PSR
14 ¶ 39 (recounting description from husband); Letters from David Langford, Benjamin Langford
15 (“She has always shown our family and everyone around her of what it means to become
16 love.”), Timothy Pedro (“She is a loving figure of character, kindness and love for others from
17 her home, her community and her subordinates and peers”), Bethany Bibbens, and Beatrice
18 Foliaki. Two of her children are from her first marriage, which ended in divorce in 2000.
19 Three children are step-children from her marriage to David Langford in 2001—although Ms.
20 Langford would never refer to them as her “step”-children. *See* Bethany Bibbens Ltr. (“Even
21 though Evelyn is my stepmother, she loves me as if she gave birth to me and treated me as if I
22 was truly one of her own.”), David Langford Ltr. (“One of the things I first admired about her
23 was her quiet but strong spirit and her caring and understanding heart. It was evident in how
24 Evelyn loved my daughters as if they were her own.”). The mother of Mr. Langford’s three
25 daughters passed away in 2000, and Ms. Langford has stepped in to care for them. *See* Beatrice
26 Foliaki Ltr. (Ms. Langford was there to “pick up the broken pieces of our family and help carry
27 us through life”).
28

1 Finally, Ms. Langford and Mr. Langford have a son together, Joshua, who is 12 years
2 old. PSR ¶ 39. Joshua just completed 7th grade. Ms. Langford takes being a mother very
3 seriously, and she is incredibly saddened that her poor choices will lead to her being imprisoned
4 during Joshua's formative years. Sentencing Ms. Langford to a term that is at least partially
5 served through home detention will allow her to continue to care for her young son.

6 3. A Lifetime of Military Service

7 In 1982, when she was just 17 years old, Ms. Langford enlisted in the U.S. Army. PSR
8 ¶ 60. After she graduated from Oklahoma Panhandle State University with a B.S. in Biology,
9 she reported for active duty. *Id.* ¶ 55. She continued to serve in different capacities until June
10 2014. *Id.* at ¶ 60. Ms. Langford was the first American Samoan woman to be promoted to
11 Lieutenant Colonel. *Id.*; *see also* Ruse Meleisea Wiley Ltr. ("Evelyn was the first female
12 Samoan officer to have reached the rank of Lieutenant Colonel due to her unlimited and
13 boundless potential as well as outstanding leadership in committing to nothing less than
14 excellence.") During her time in the military, she received four Meritorious Service Medals,
15 five Army Commendation Medals, the Army Achievement Medal, the National Defense
16 Service Medal, the South West Asia Service Medal, the Global War on Terrorism Service
17 Medal, the Army Service Ribbon, the Overseas Service Ribbon, and the Armed Forces Reserve
18 Medal. *Id.* According to an officer who served with Ms. Langford, Ms. Langford "personified
19 the Army values." Ruse Meleisea Wiley Ltr.

20 In 2008, Ms. Langford made the decision to leave active military duty to move to
21 American Samoa to care for her father. She failed to properly "process out" of active duty and,
22 as such, she continued to receive active duty pay when she should have been receiving reserve
23 duty pay. In 2013, Ms. Langford pleaded guilty to conduct unbecoming an officer and a
24 gentlewoman, and received a sentence of a reprimand and forfeiture of her pay for five months.
25 PSR ¶ 28. In 2014, Ms. Langford was nevertheless honorably discharged from the Army. *See*
26 PSR ¶ 60.

4. Contributions to the Community

In the letters submitted on her behalf, Ms. Langford is time and time again described as a generous, charitable woman. For example, a letter from Mr. and Mrs. Mario Lefiti states, “This is a woman that pours out her heart to so many people including her Pacific Islander community, lending a helping hand where ever there’s a need.” In addition to the 32 years of military service she provided to this country, Ms. Langford has made countless contributions to her community. *See* Letters from David Langford (“From 2001 to 2008, Evelyn led all of the community Army Asian Pacific events at Fort Sam Houston and in the city of San Antonio, Texas.”); Joe Katina (Ms. Langford was a guest speaker at events to inspire young Samoans to pursue their dreams); Ricky Logo (Ms. Langford was “active in our church and the Samoan community”); Vickie Haleck (Ms. Langford volunteered her time for the Teen Challenge ministry for troubled and at-risk youths); Aloalii A. Sasa (Ms. Langford is “very active in our church and started our music ministry for the youth as well as helping out with our children’s ministry,” and flew to American Samoa to support Mr. Sasa at his wife’s and mother’s funerals); Ella Wallace-Robinson (Ms. Langford has helped with the Katina Missions for many years); Mariah Hiner (Ms. Langford helped friend’s family whose son had passed away make mourning process easier for their family); and Tumua Matu’u (Ms. Langford volunteered her time for community event).

5. Mental Health and Its Role in the Circumstances of the Offense

As part of the Court’s analysis of the “nature and circumstances of the offense and the history and characteristics of the defendant,” (18 U.S.C. § 3553(a)(1), the Court should consider Ms. Langford’s mental and emotional health, especially the role it played in the offense. As the PSR Sentencing Recommendation recognizes, Ms. Langford “has experienced a significant amount of trauma in her past and appears to have been under a significant amount of stress at the time of the instant offense.” PSR, Sentencing Recommendation, at 2. Ms. Langford was evaluated by Clinical Psychologist Dr. Scott Lines in connection with the sentencing. Dr. Lines has concluded that Ms. Langford suffered from Posttraumatic Stress Disorder (“PTSD”) at the

1 time of her offense, which resulted in diminished mental capacity and impairment in judgment
2 that contributed substantially to her committing the offense. Lines Report, at 5-7.

3 As mentioned above, in 2008 Ms. Langford moved from Texas to American Samoa to
4 care for her ailing father and began a new job as the Director of Human Resources for the
5 American Samoa government. The move was incredibly disruptive to her life, not just for Ms.
6 Langford but also for her husband and two youngest children who moved with her; however,
7 she moved because she felt a duty to care for her father. Lines Report, at 4. Around the same
8 time, one of her children suffered from serious health issues and had to be admitted to an
9 inpatient psychiatric facility. PSR ¶ 49; Lines Report, at 4. Ms. Langford felt tremendous guilt
10 for moving her family to American Samoa, and she blamed herself for her child's health crisis
11 and for causing her children to lose their social support system. Lines Report, at 6.

12 Caring for her father, trying to help her husband and two sons adjust to their new life in
13 American Samoa, and handling her new job as the Director of Human Resources, including a
14 rigorous confirmation process, resulted in a high level of psychological pressure and stress in
15 Ms. Langford's life. Then, on September 29, 2009, an earthquake and tsunami hit American
16 Samoa. PSR ¶ 50. Ms. Langford was driving to work when the earthquake struck, and recalls
17 feeling the ground shake under the car. Lines Report, at 4. Then, when the tsunami hit, she saw
18 the water rise rapidly on the roadway around her. *Id.* Thirty-two people died in the natural
19 disaster, including her aunt and cousin. *Id.* As a part of her government work related to the
20 relief effort, Ms. Langford was required to read the autopsy reports of those killed in the
21 disaster, including those of her aunt and cousin. *Id.* at 5. She worked tirelessly during this time,
22 getting no more than five hours of sleep a night, but still felt helpless because she could not help
23 all those who asked for her help. *Id.* at 4-5. At the same time, she tried to satisfy her father's
24 demands, supporting him financially at great expense. *Id.* at 5.

25 In early 2012, the time period leading up to the offense conduct, Ms. Langford had the
26 added stress of trying to pay back the military for the salary overpayments she had received.
27 She had been using much of the extra salary she had received on her father's expenses, and she
28 could not immediately repay the money, as the military requested. *See* Lines Report, at 5. At

1 the same time, in February 2012, her young son (a different son than the one discussed at
2 paragraph 49 of the PSR) suffered from a serious medical condition that resulted in
3 hospitalization. PSR ¶ 51.

4 All of these traumas had a severe effect on Ms. Langford's mental and emotional
5 health. In the four years between Ms. Langford's father having a major stroke and the
6 offense conduct, Ms. Langford uprooted her family from Texas to American Samoa,
7 survived a tsunami in which she lost two family members, helped two of her sons through
8 major health scares, underwent the stress of her new job dealing with the tsunami relief
9 efforts, and made mind-boggling financial sacrifices for her father's sake. In diagnosing
10 Ms. Langford with PTSD, Dr. Lines opined, "The extent of devastation created by the
11 tsunami impacted Evelyn directly, both in terms of her own direct exposure to the
12 earthquake and tsunami swell that flooded the island, and also because of the secondary
13 exposure via the impact the tsunami had on others." Lines Report, at 5. Dr. Lines observed
14 the clinical symptoms of PTSD in his evaluation of Ms. Langford: intrusive thoughts of the
15 trauma, avoidance of traumatic stimuli, and autonomic numbing of responsiveness. *Id.*

16 The Court may consider Ms. Langford's mental capacity to commit the offenses to
17 which she has pled guilty as part of the "nature and circumstances of the offense and the
18 history and characteristics of the defendant" under Section 3553(a)(1). Under 18 U.S.C.
19 § 3553(a)(5), the Court shall also consider any pertinent policy statement issued by the U.S.
20 Sentencing Commission. The policy statement regarding diminished capacity set forth in
21 USSG § 5K2.13 is pertinent here. *See also* USSG § 5H1.3 ("Mental and emotional
22 conditions may be relevant in determining whether a departure is warranted, if such
23 conditions, individually or in combination with other offender characteristics, are present to
24 an unusual degree and distinguish the case from the typical cases covered by the
25 guidelines."). Section 5K2.13 is couched as a downward departure from the guidelines for
26 certain defendants whose diminished capacity contributed to the commission of the offense.
27 The Ninth Circuit has held that "the scheme of downward and upward 'departures' [has]
28 essentially [been] replaced by the requirement that judges impose a 'reasonable' sentence."

1 *United States v. Mohamed*, 459 F.3d 979, 986-87 (9th Cir. 2006); *see also United States v.*
 2 *Blixt*, 548 F.3d 882, 890-91 (9th Cir. 2008) (treating a district court's analysis of a
 3 downward departure under Section 5K2.13 as "'an exercise of post-*Booker* discretion to
 4 sentence a defendant outside of the applicable guidelines range.'" (quoting *Mohamed*, 548
 5 F.3d at 987).

6 In any event, to have qualified for a downward departure under Section 5K2.13 pre-
 7 *Booker*: (1) the defendant had to have committed the offense while suffering from a
 8 significantly reduced mental capacity and (2) the defendant's significantly reduced mental
 9 capacity must have contributed substantially to the commission of the offense.¹
 10 "Significantly reduced mental capacity" means the defendant "has a significantly impaired
 11 ability to (A) understand the wrongfulness of the behavior comprising the offense or to
 12 exercise the power of reason; or (B) control behavior that the defendant knows is
 13 wrongful." USSG § 5K2.13, app. note 1.² The Ninth Circuit has held that PTSD can be a
 14 "significantly reduced mental capacity" when the ailment distorted the defendant's
 15 reasoning and interfered with the defendant's ability to make considered decisions. *See*
 16 *United States v. Cantu*, 12 F.3d 1506, 1513 (9th Cir. 1993) (holding that a Vietnam War
 17 veteran's PTSD constitutes a significantly reduced mental capacity for the purpose of
 18 § 5K2.13 and that his disorder contributed to the commission of his offense); *see also*
 19 *United States v. Menyweather*, 447 F.3d 625, 632 (9th Cir. 2005) (upholding downward
 20 departure based on diminished capacity where PTSD of defendant (an administrative
 21 employee in the Los Angeles U.S. Attorney's Office), which was caused by her

23 ¹ By its terms, Section 5K2.13 excludes from its ambit defendants whose diminished
 24 capacity was caused by drug use, violent offenders, recidivists requiring imprisonment for
 25 the sake of public safety, and defendants convicted of certain listed crimes not at issue
 here. Ms. Langford does not fall within any of these exclusions.

26 ² NB: Sentencing a defendant based in part on diminished mental capacity is not
 inconsistent with a finding that the defendant possessed the requisite criminal intent.
 27 *United States v. Zedner*, 401 F.3d 36, 52 (2nd Cir. 2005), *rev'd on other grounds*, 547
 28 U.S. 489 (2006). "The defendant could have acted with criminal intent so as to be guilty
 of a crime, while at the same time suffering from a diminished mental capacity that would
 justify departure." *Id.*

1 abandonment by her parents and witnessing her fiancé's murder 8 years prior to the offense
2 conduct, contributed to her use of government credit cards to make unauthorized personal
3 purchases of between \$350,000 and \$500,000).

4 Under the Section 5K2.13 framework, the defendant's ailment must also "contribute
5 substantially" to the commission of the offense. USSG Manual § 5K2.13 (2015). The
6 Ninth Circuit has held that the "disorder need be only a contributing cause, not a 'but for' or
7 a 'sole' cause, of the offense." *Cantu*, 12 F.3d at 1515 (holding that defendant's PTSD,
8 caused by his experiences in the Vietnam war, created a fixation on weapons, which
9 contributed to his offense of being a felon in possession of a firearm); *see also*
10 *Menyweather*, 447 F.3d at 632.

11 At the time of the offense, Ms. Langford lacked the ability to understand the
12 wrongfulness of her conduct and was unable to exercise reason in making her decisions. In
13 considering a defendant's diminished capacity in the sentencing calculus, courts have given
14 substantial weight to the opinion of the licensed psychologist who evaluated the defendant.
15 *See e.g., Menyweather*, 447 F.3d at 631-32. Dr. Lines has opined that at the time of the
16 offense Ms. Langford was "operating under considerable psychological pressure." *Id.* at 6.
17 Her psychological pressure, described more fully in the Lines Report, was the result of
18 several factors: the tsunami; her role in American Samoa's relief effort, requiring her to
19 deal with death and destruction in her life and the lives of many others on a daily basis for a
20 prolonged period of time; extreme financial and other support obligations to her family; and
21 extreme traumas occurring in her family. *Id.* at 6-7. Dr. Lines "found clear evidence" of
22 PTSD during his examination of Ms. Langford. *Id.* at 5. Further, Dr. Lines states that Ms.
23 Langford's longstanding PTSD diminished her overall cognitive and emotional functioning
24 at the time of the offense. *Id.* at 7.

25 Dr. Lines' report shows that Ms. Langford was suffering from a significantly
26 reduced mental capacity, which contributed substantially to the offense. As Dr. Lines
27 states:

28

1 “Under more psychologically intact conditions, she both would
 2 have known her conduct to be inappropriate and would have been
 3 able to prevent herself from engaging in that conduct by not
 4 entering into an arrangement with the executive in question.
 5 Instead, her cognitive capacity was overwhelmed with the myriad
 6 factors identified in this evaluation and her reasoning was
 7 substantially distorted. As a result, her knowledge of the conduct as
 8 wrong was questionable and her ability to withstand engaging in the
 9 conduct was lacking. Both are features of her diminished mental
 10 capacity and impairment in judgement.”

11 *Id.* at 7. At the time of the offense, her impaired ability to reason “allowed her[] to be used
 12 by the Native Hawaiian Holding Company.” *Id.*

13 Putting aside the other grounds in this Memorandum for a variant sentence, Ms.
 14 Langford’s mental health issues – whether considered under the diminished capacity
 15 analysis of Section 5K2.13 (incorporated through Section 3553(a)(5)), or directly under
 16 Section 3553(a)(1) – should alone qualify Ms. Langford for a substantially below-
 17 Guidelines sentence.

18 **C. A Sentence Well Below the Guidelines Range is Required in Order to**
 19 **Avoid Unwarranted Disparities with the Great Majority of Public Corruption**
 20 **Sentences.**

21 18 U.S.C. § 3553(a)(6) directs the Court to consider “the need to avoid unwarranted
 22 sentence disparities among defendants with similar records who have been found guilty of
 23 similar conduct.” A sentence within the Guidelines range of 46 to 57 months would create
 24 unwarranted disparities between Ms. Langford’s sentence and other sentences handed out in
 25 public corruption cases. First, public officials convicted of substantially more egregious
 26 conduct often receive more lenient sentences than Ms. Langford’s agreed-upon Guidelines
 27 range. Second, the only other defendant of whom the defense is aware who was convicted
 28 solely for providing access to other public officials (rather than in exchange for taking
 certain official acts (e.g., supporting certain legislation)) – the former Governor of Virginia
 – received a sentence that was less than **20%** of the low end of the applicable Guidelines
 range. Finally, sentences for bribery convictions well below the applicable Guidelines
 ranges are the norm in this Circuit and nationwide.

1. Public officials convicted of more egregious conduct typically receive sentences lower than the low end of Ms. Langford's Guidelines range.

Public officials convicted of conduct within the "heartland" of public corruption statutes – such as rigging government contracts or interfering with government investigations in exchange for personal benefit – often receive sentences well below 46 months, the low end of the agreed-upon Guidelines range in this case. For example:

- U.S. Representative Richard Renzi received a 36-month sentence for supporting federal legislation in exchange for personal benefits despite having a Guidelines range of 97 to 121 months. Judgment at 1, *United States v. Renzi*, 4:08-CR-00212 (D. Ariz. Oct. 28, 2013), Dkt. 1318; Gov.'s Sentencing Mem. at 2 (Oct. 21, 2013), Dkt. 1307.³
- U.S. Representative Robert Ney received a 30-month sentence for his role in the Jack Abramoff scandal. Rep. Ney supported and amended legislation, inserted statements into the Congressional Record, and influenced federal agency decision-making in exchange for hundreds of thousands of dollars in cash and in-kind benefits. Factual Basis for Plea at 3-11, *United States v. Ney*, 1:06-CR-00272 (D.D.C. Oct. 13, 2006), Dkt. 5; Judgment at 2 (Jan. 3, 2007), Dkt. 20.⁴
- U.S. Representative Donald "Buz" Lukens received a 30-month sentence for accepting money in exchange for attempting to end a pending federal investigation. *United States v. Lukens*, 1:95-CR-00041 (D.D.C. June 20, 1996).

³ The Government requested a 108 to 144 month sentence. Govt. Sentencing Mem. at 2 (Oct. 21, 2013), Dkt. 1307.

⁴ As described below, 12 of Ms. Langford's 23 adjusted offense level points are derived from the § 2B1.1 loss table. Rep. Ney received no adjustment under this table, despite a gain that should have merited a 10- to 12-level increase under § 2B1.1 (as incorporated by the 2003 version of § 2C1.7(b)(1)(A)). Plea Agreement at 4 (Oct. 13, 2006), Dkt. 4.

Only where public officials have been convicted of extraordinarily egregious conduct have courts chosen to impose lengthier sentences, and even then below-Guidelines sentences are common. For example, U.S. Representative William Jefferson was convicted of influencing U.S. and African officials in exchange for hundreds of millions of dollars—including \$100,000 in cash from an FBI informant, most of which was later found hidden in his freezer. Indictment at 32-33, *United States v. Jefferson*, 1:07-CR-00209 (E.D. Va. June 4, 2007), Dkt. 1. Despite the extreme nature of Rep. Jefferson’s conduct and the huge sums involved, the court rejected a Guidelines range of 262 to 327 months in favor of a 156-month sentence – less than 60% of the low end of his applicable Guidelines range. Judgment (Nov. 13, 2009), Dkt. 624.

U.S. Representative Randall “Duke” Cunningham pleaded guilty to receiving at least \$2.4 million in bribes and in-kind gifts, including a 42-foot yacht named the “Duke-Stir.” Indictment at 6, *United States v. Cunningham*, 05-CR-2137 (S.D. Cal. Nov. 28, 2005), Dkt. 1. In exchange, Rep. Cunningham attempted to direct Congressional appropriations and Department of Defense contracts to his co-conspirators. *Id.* Again, despite the egregious nature of Rep. Cunningham’s conduct, the court sentenced him to 100 months’ imprisonment, only 74% of the low end of his Guidelines range of 135 to 168 months. Plea Agreement at 24 (Nov. 28, 2005), Dkt. 40-2; Judgment at 2 (Apr. 6, 2006), Dkt. 34.

Ms. Langford’s conduct pales by comparison to these defendants and she deserves an lower sentence proportionally. Without minimizing the gravity of her offense, she pleaded guilty to arranging a meeting between Quin Rudin and the Governor of American Samoa. She did not influence government officials, corruptly support legislation, attempt to end an investigation, or conspire to extort hundreds of millions of dollars.

2. The only other public official convicted for access-based conduct received a sentence well below the applicable Guidelines range.

The defense is aware of only one case in which a public official was sentenced purely for access-based conduct. Former Virginia Governor Bob McDonnell was recently

convicted for receiving in-kind gifts in exchange for providing access to events at the Governor's mansion and arranging meetings with state officials. Indictment at 7-32, *United States v. McDonnell*, 3:14-CR-00012 (E.D. Va. Jan. 21, 2014), Dkt. 1, *appeal filed*, No. 15-4019 (4th Cir. argued May 12, 2015); Amended Judgment at 1 (Jan. 13, 2015), Dkt. 627.⁵ Gov. McDonnell's conviction represented what we believe to be a new application of federal bribery law: a conviction merely for providing access to government officials. No "official act" other than increased access to state officials was exchanged in the *quid pro quo*. Def.'s Sentencing Mem. at 30 (Dec. 23, 2014), Dkt. 582. The court sentenced Gov. McDonnell to 24 months' imprisonment – **19.8%** of the low end of his Guidelines range of 121 to 151 months. Def.'s Sentencing Mem. at 37 (Dec. 23, 2014), Dkt. 582; Amended Judgment at 3 (Jan. 13, 2015), Dkt. 627.

Like Ms. Langford, Gov. McDonnell did not provide tangible preferential treatment and this was reflected in his sentence. But unlike Gov. McDonnell, the highest-ranking elected official in the Commonwealth, Ms. Langford did not fight the charges against her through a lengthy trial. She fell on her sword very early in this case – even before any discovery was provided – admitting her conduct the first time the government asked her about it.

3. Sentences well below applicable Guidelines ranges are exceedingly common in public corruption cases.

Sentences well below applicable Guidelines ranges are the norm for public corruption cases, as shown by statistics published by the U.S. Sentencing Commission. **In Fiscal Year 2014, 60.4% of sentences imposed nationwide under USSG § 2C1.1 were below the Guideline range—and that excludes sentences where the government sponsored a departure pursuant to Sections 5K1.1, 5K3.1, or otherwise.** This compares

⁵ The value of in-kind gifts received by Gov. McDonnell and those acting with him was disputed, with the government valuing the gifts at nearly \$177,000 and Gov. McDonnell at under \$20,000. *See* Govt. Sentencing Mem. at 9 (Dec. 23, 2014), Dkt. 591; Def.'s Objections to PSR at 12 (Dec. 23, 2014), Dkt. 592. The court determined the value of the gifts was between \$97,000 and \$121,000 and applied an 8-level increase under the § 2B1.1 loss table. *See* Sentencing Hr'g Tr. at 27:16-24 (Jan. 6, 2015), Dkt. 604.

with 30.7 % of sentences nationwide for all crimes.⁶ See FY2014 Report, at Tables 1, 5 (104 of 175 sentences). This below-Guidelines trend is supported by historical data for sentences in cases where bribery is the primary offense category from: 2013 (100 of 187 sentences below Guidelines), 2012 (83 of 151 sentences), 2011 (80 of 177 sentences), and 2010 (88 of 177 sentences). See FY2013 Report, FY2012 Report, FY2011 Report, FY2010 Report, all at Table 5.

Not only are below-Guidelines sentences in bribery cases prevalent, the degree to which sentences are below-Guidelines is pronounced. Among below-Guideline bribery sentences in Fiscal Year 2014, again excluding sentences that also included government-sponsored departures, **the nationwide median below-Guideline sentence was eight months' imprisonment, representing a twelve-month or 66.7% median percent decrease from the low end of the applicable Guidelines.** See FY2014 Report at Table 12 (429 sentences).⁷ **This trend is mirrored in the Ninth Circuit, where the median bribery sentence during Fiscal Year 2014 was just ten months.** See Ninth Circuit FY2014 Packet, at Table 7.

Throughout the Ninth Circuit and nationwide, courts have decided the Guidelines sentencing ranges for bribery crimes are far too high and, accordingly, have consistently handed down substantially lower sentences. Applying a 66.7% reduction to the low-end of

⁶ National statistical data for fiscal years prior to 2015 is provided by the U.S. Sentencing Commission in the form of "Final Quarterly Data Reports" available at <http://www.ussc.gov/research-and-publications/federal-sentencing-statistics/quarterly-sentencing-updates>. For fiscal year 2015, data for the first quarter (October through December 2014) is also available at that same location. Citations to national data from the aforementioned reports will be cited herein as, for example, "FY2014 Report." Regional data is provided in the form of "Statistical Information Packets" available at <http://www.ussc.gov/research-and-publications/federal-sentencing-statistics/federal-sentencing-statistics-district-circuit-state>. Citations to regional data will be cited herein as, for example, "Ninth Circuit FY2014 Packet."

⁷ We acknowledge that these data are only for below-Guidelines sentences (as noted, excluding sentences that also involved a government-sponsored departure), and do not include the 39.6% of sentences that were above or within the Guidelines. Unfortunately, the Sentencing Commission does not appear to publish data on the median percentage decrease for bribery sentences overall. That said, according to the Commission, the median sentence for bribery nationwide in fiscal year 2014 was 12 months (FY2014 Report, at Table 19).

Ms. Langford's Guidelines range (46 months) results in a **15-month** sentence – irrespective of any other sentencing factors. While Ms. Langford acknowledges the impropriety of her conduct and deeply regrets what she did, we submit that the facts of her case, including her personal characteristics and the circumstances of the offense (*see supra*), do not merit a more severe sentence than that of the median below-Guidelines bribery case – or for that matter, the median bribery sentence of 12 months (*see* FY2014 Report, Table 19). If anything, the facts of her case, while serious, appear to be less serious than many reported bribery cases (as noted above). Although our requested sentence of 12 months is lower than that prescribed by the Guidelines (and the lower sentence recommended by Probation), such a sentence is needed to avoid unwarranted sentencing disparities, 18 U.S.C. § 3553(a)(6), and is reasonable and appropriate, especially when one considers the other factors addressed above and below.

D. A Sentence Based on the Loss Table in USSG § 2B1.1 Would Be Unjust.

In addition, Ms. Langford's Guidelines range of 46 to 57 months is largely founded on the 12-level increase for the value of the money she received, per the USSG § 2B1.1 loss table (incorporated via Section 2C1.1(b)(2)). There has been resounding criticism of the Section 2B1.1 loss table, with judges and practitioners alike expressing concern that it does not appropriately measure the seriousness of economic offenses and, thus, is unduly punitive. *See* U.S. Sentencing Commission, Comments by Vice Chair (and Judge) Breyer, Video Recording of Public Meeting at 29:00-29:30 (Apr. 9, 2015), <http://www.usc.gov/videos/public-meeting-april-9-2015> (transcript not yet available) (“USSC Hearing Video”). Recognizing this controversy, the Sentencing Commission identified economic crimes as a priority for the 2014-2015 amendment cycle. *See* U.S. Sentencing Commission Selects Policy Priorities for 2014-2015 Guidelines Amendment Cycle (Aug. 14, 2014), http://www.usc.gov/sites/default/files/pdf/news/press-releases-and-news-advisories/press-releases/20140814_Press_Release_Revised.pdf.

In addition, the American Bar Association's Criminal Justice Section created the Task Force on The Reform of Federal Sentencing for Economic Crimes, which issued a

report suggesting dramatic changes to the Section 2B1.1 loss table, including higher loss thresholds, lower corresponding adjustments, and additional culpability adjustments. *See* A Report on Behalf of The American Bar Association Criminal Justice Section Task Force on The Reform of Federal Sentencing for Economic Crimes (Nov. 10, 2014), http://www.americanbar.org/content/dam/aba/uncategorized/criminal_justice/economic_crimes.authcheckdam.pdf (“ABA Report”).

Currently, the loss table contributes nearly half of the points in Ms. Langford’s total offense level before the reduction for acceptance of responsibility (12 of 26 points). PSR at ¶ 17. Using the ABA Report’s proposed approach, Ms. Langford’s total adjusted offense level would be as low as 7 and as high as 17 points, with a corresponding Guidelines range as low as 0 months and as high as 30 months.⁸

While the Sentencing Commission did not implement the suggestions made by the ABA Report in the most recent amendment cycle, Commissioners expressed their approval of the ABA Report’s focus on culpability rather than loss amounts alone. Far from indicating that the ABA Report was too lenient, Commissioner Barkow called for even more widespread focus on culpability, stating:

I agree with the ABA’s diagnosis of what is wrong with the fraud guidelines, and also its focus on a solution that’s targeted towards culpability. But the problem of insufficient attention to culpability is not unique to fraud. It is widespread throughout the Guidelines Manual and, in fact, goes to the very core of the Guidelines approach. The Guidelines place an emphasis on objective factors of harm without paying much attention to the defendant’s culpability

⁸ Current Guidelines Calculation

14	base offense level
+12	§ 2B1.1 loss table
-3	acceptance of responsibility
23	<i>total offense level</i>

ABA Report

14	base offense level
+6	revised loss table
-3	acceptance of responsibility
0 to -10	culpability adjustment
7 to 17	<i>total offense level</i>

The ABA Report includes a nonexclusive list of culpability factors, such as (i) the defendant’s motive, (ii) the degree to which the offense was sophisticated or organized, (iii) the duration of the offense, and (iv) any extenuating circumstances. *See* ABA Report. We submit that Ms. Langford should receive a substantial reduction under these culpability factors. However, even if Ms. Langford did not receive a culpability adjustment under the ABA Report, her Guidelines range would nonetheless be significantly reduced from 23 to 17.

1 with respect to that harm. . . . The unlucky are placed in the same
 2 grid as the malevolent. The question is how to fix this fundamental
 problem that transcends fraud and permeates the book.

3 USSC Hearing Video at 33:20-34:10.

4 The ABA Report is obviously not binding on the Court. But the criticisms in the
 5 Report are valid. The section 2B1.1 loss table focuses too much on financial loss/gain and
 6 assigns too many points (i.e., months of prison time) per dollar received and therefore is, as
 7 Judge Breyer stated, unduly punitive. We ask that the Court take these criticisms (and the
 8 solution set forth in the ABA Report) into consideration when assessing whether a
 9 Guidelines sentence is appropriate for Ms. Langford.

10 **E. A Long Prison Sentence Is Not Needed to Protect the Public from Ms.**
 11 **Langford.**

12 The Court must impose a sentence that “protect[s] the public from further crimes of
 13 the defendant.” 18 U.S.C. § 3553(a)(2)(C). There is no need to imprison Ms. Langford for a
 14 long period of time to accomplish that goal because there is very little risk she will commit
 15 crimes in the future. Probation recognizes, “[h]er conduct appears to be a response to the
 16 immediate circumstances in her life and are not necessarily representative of a lifestyle of
 17 criminal conduct for personal gain.” PSR Sentencing Recommendation, at 2. Ms.
 18 Langford has no unrelated prior criminal history, drug abuse problems, or challenges with
 19 unemployment, housing, or transportation. While she has some mental health issues, she is
 20 willing to deal with them proactively. At the same time, she has a strong social support
 21 network, marketable skills, education and background, and a motivation to work toward
 22 repaying any restitution ordered by the court. She is also no longer working for the
 23 government and is not in a position to receive bribes. Rather, she is currently employed by
 24 a family member’s restaurant business, and she has a job to which she can return. PSR
 25 ¶ 42; Easter “Hensan” Timo Ltr. (describing Ms. Langford’s performance managing the
 26 restaurant as “[d]iligent, hard working and selfless” and stating that her continuing
 27 employment with the business will help her make restitution). Weighing these factors
 28 together, Ms. Langford’s risk of recidivism is extremely low.

1 It is made even more so by the deterrent effect this case has already had on her. The
 2 case has been covered by the Samoan press. As various letters to the Court attest, Ms.
 3 Langford's communities in Samoa and in the United States are well aware of the case and it
 4 has brought substantial shame to her and to her family. The case has had a profound effect
 5 on her. She is deeply regretful and wants only to make amends and also to provide for her
 6 family while leading a law-abiding life. Years in prison would have no greater deterrent
 7 effect on her than a day would. *See* U.S.C. § 3553(a)(2)(B)-(C).

8 **F. The Need to Provide Restitution Weighs in Favor of a Shorter Period of**
 9 **Incarceration.**

10 The last section 3553(a) factor requires the Court to consider “the need to provide
 11 restitution to any victims of the offense.” 18 U.S.C. § 3553(a)(7). Pursuant to the plea
 12 agreement, Ms. Langford agreed to pay restitution in an amount set by the Court, but in no
 13 event less than \$260,000. Plea Agt., Dkt. 11 ¶ 10. Ms. Langford's obligation to begin
 14 repaying the American Samoa government counsels in favor of a twelve-month sentence,
 15 which will enable Ms. Langford to return to gainful employment sooner. Allowing her to
 16 serve part of the sentence in home detention or community confinement would expedite
 17 that process even further, and would also allow Ms. Langford to resume support and care
 18 for her family – particularly her youngest son, Joshua – more quickly.

19 **III. BUREAU OF PRISONS DESIGNATION.**

20 Ms. Langford, most of her support network, and the family she holds dear, live in
 21 Copperas Cove, Texas. In particular, Ms. Langford wants to stay near Joshua and her husband,
 22 David. Accordingly, Ms. Langford respectfully requests that the Court recommend that she be
 23 designated to serve whatever term of imprisonment the Court may impose in a Bureau of
 24 Prisons facility as close as possible to Copperas Cove, Texas.

IV. CONCLUSION

For the foregoing reasons, Ms. Langford respectfully requests that the Court sentence her to 12 months, allowing her to serve at least some of that time in home detention or community confinement in order to allow her to begin making restitution as soon as possible and to allow her to care for and support her family, especially her young son, Joshua.

Dated: June 19, 2015.

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